

MINUTES OF THE MEETING
OF THE CITY COUNCIL OF THE
CITY OF BURLINGTON
January 17, 2006
7:30 P.M.

The City Council of the City of Burlington held a regularly scheduled meeting in the Council Chamber, Municipal Building, 425 South Lexington Avenue, Burlington, N. C., 27216-1358, on January 17, 2006, at 7:30 p.m.

Mayor Stephen M. Ross presided

Invocation: Councilmember Starling

Councilmembers present: Mayor Ross, Councilmembers Jones, Huffman, Starling and Wall

Councilmembers absent: None

Harold Owen, City Manager, present

Robert M. Ward, City Attorney, present

Jondeen D. Terry, City Clerk, present

MINUTES

Mayor Ross called for approval of the City Council minutes of the meeting of January 3, 2006.

Upon motion by Councilmember Jones, seconded by Councilmember Wall, it was resolved unanimously to approve the minutes of the meeting held on January 3, 2006.

ADOPTION OF AGENDA

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to adopt the agenda with the addition of the public comment period.

CONSENT AGENDA:

- A) To authorize an investment account at MidCarolina Bank and to authorize the City Clerk and Mayor to attest the resolution.
- B) To authorize an investment account at BB&T Bank and to authorize the City Clerk to attest the resolution.
- C) To authorize the disposal of building plans in the Inspections Division that have been held longer than one year as permitted within the North Carolina General Statutes.
- D) To set a date of public hearing for February 7, 2006, to consider citizen comments on the housing and neighborhood improvement needs in low and moderate-income areas and to propose activities to address these needs in the upcoming fiscal year.
- E) To set a date of public hearing for February 7, 2006, to consider proposed amendments to the City of Burlington Subdivision Regulations pertaining to the posting of sureties for development - Letters of Credit.
- F) To approve the amended contract between the City of Burlington and Hobbs, Upchurch and Associates to the City's housing rehabilitation services under the Community Development Program. The amended contract increases the hourly rate for these services from \$60 per hour to \$75 per hour. The "not-to-exceed" cost per unit does not increase.

Upon motion by Councilmember Starling, seconded by Councilmember Huffman, it was resolved unanimously to approve the foregoing consent agenda.

UNFINISHED BUSINESS:

REZONE PROPERTY - KIRKPATRICK ROAD - ETHAN POINTE APARTMENT COMPLEX

Mayor Ross announced that a public hearing had been continued to consider rezoning from R-15, Residential District, to CR, Conditional Residential District, to allow construction of 279 apartment units, Ethan Pointe. The

property is located on the east side of Kirkpatrick Road approximately 915 feet south of Grand Oaks Boulevard as shown on Alamance County Tax Map 3, Block 22D, Lot 34. (CONTINUED FROM DECEMBER 6, 2005, CITY COUNCIL MEETING - ON APPEAL)

NOTE: At the December 6, 2005, public hearing Councilmember Jones was excused from voting.

Mr. Brown stated that the rezoning request was before the City Council on appeal from a continued hearing in December at which time he went into great detail. He stated that Seas Real Estate Development, Inc., was the applicant and that Mr. Steve Silverman and Ms. Crystal Hardison with Seas were present to answer questions that he could not answer. Mr. Brown stated that basically the question last time was the dedication and/or construction of Grand Oaks Boulevard. He stated that the parcel under consideration was approximately 26 acres and has frontage on what is known as Grand Oaks Boulevard. He said the final construction drawings had not been finalized by the NCDOT but they were pretty well in line. He explained that the 100' right-of-way was called for Grand Oaks Boulevard and basically that intersection was existing. He explained that there was no construction but that area on the Garland Perry property has been dedicated or acquired by the NCDOT; therefore, Seas Real Estate Development had agreed with the property owners, the Isley family, to purchase 100' of the right-of-way in addition to purchasing the 26 acres. He also stated that in addition as a specific condition of this rezoning request, Seas Real Estate Development had agreed to dedicate at no cost to the NCDOT 50' of the 100' of right-of-way. Mr. Brown stated the he had had numerous discussions with Mr. Mike Mills, District Engineer, NCDOT, who had had numerous discussions with his folks in Raleigh and what he had been told most recently was that the balance of the 50' would be acquired by the NCDOT under its normal process. Mr. Brown stated that he had attempted to negotiate a price but that NCDOT said it would do it in the normal course of its acquisition. He stated that Mr. Mills indicated that that would go ahead and take place in the next few months so that the right-of-way for 100' would be dedicated and/or acquired at a cost savings to the taxpayers of 50%. He pointed out that unfortunately the best information he had from the NCDOT was that it would not accelerate the actual construction of Grand Oaks Boulevard. He also pointed out there would remain a portion of Grand Oaks Boulevard to the east that was not controlled by the Isley family or Seas Real Estate Development. He also explained that there were a couple of

property owners to the east to join Grand Oaks so there would be additional right-of-way that would have to be purchased to actually complete the Southern Loop in any event.

He stated that there are two entrances off Kirkpatrick Road; that when Grand Oaks was built, in addition to the Grand Oaks, there will be a 60' street dedicated built by Seas Real Estate Development for the property that is to the south and that as an interim measure, the Department of Transportation will approve a driveway permit for a two-lane driveway to access this property.

Mr. Brown stated that the rezoning was before City Council on appeal, and basically the sentiment at the Planning Commission was that this was an ideal spot for apartments once Grand Oaks Boulevard was built. He said he and the developers had addressed all those transportation concerns.

Mr. Brown stated that he had submitted a litany of conditions at the first segment of the public hearing including the transportation issues. Mr. Brown pointed out that in addition to those conditions he had articulated that the apartments were going to be luxury and would have very high amenities packages as shown in Council agenda packages. He stated that in addition to that, the water and sewer fees would be paid 50% at the time of the issuance of the building permit and the other 50% 12 months later. He said there would be 279 units, would take about 16 months to construct, would anticipate that this project would begin the spring of 2006 and therefore would be complete somewhere in the fall of 2007 - about a \$27 million improvement.

Councilmember Starling asked what NCDOT had indicated as far as right-of-way for the balance of the properties, and Mr. Brown replied that he had discussed the matter with Mr. Mike Mills on several occasions and that basically what they had indicated was that if Mr. Silverman would dedicate 50' of this across the Isley property that NCDOT would go ahead and purchase the other 50' which would make it a clear 100' dedication and then the construction of this road would be after the non-Isley, non-Seas Real Estate is acquired and whenever the project was actually funded. He stated it was scheduled for 2007 and that his hope was that with the acceleration of the dedication and the discount that some of the money used in terms of the discount would accelerate construction of the project, but Mr. Mills has told him that was not the case.

Councilmember Starling asked about the property to the east and Mr. Brown replied that the NCDOT said that it would be in the normal course, that he was not sure when that was scheduled, but if construction was scheduled to begin in 2007 then he assumed the NCDOT would start buying right-of-way to the east (non-Isley, non-Seal Real Estate) sometime this year.

Councilmember Huffman pointed out that the City couldn't bind the NCDOT to do anything. Mr. Huffman was reading from Mr. Brown's letter to the NCDOT dated January 17, 2006, to Mr. Mills and Mr. Harkrader, indicating that there was an understanding the remaining 50' would be paid by the NCDOT. Mr. Huffman stated that the City is interested in making sure the road gets built in a timely fashion. Mr. Huffman said what is really happening is that the NCDOT is going to try to acquire the property from the Isleys, but if it cannot do so, it will condemn it if it is going to go forward with the project, but if it chose not to go forward, it would be its own prerogative to do that and there would be nothing the City could do to bind the NCDOT.

Mr. Brown replied that the 50' would be sufficient to build a two-lane road, but the best that Mr. Mills can say is that the folks in Raleigh say they will go ahead and purchase the right-of-way this spring. Mr. Brown agreed with Mr. Huffman that the City couldn't bind the NCDOT.

Councilmember Huffman asked about the sewer charges, and Mr. Brown stated that the water and sewer charges would be approximately \$420,000 - \$440,000 based on the number of units. Normally that is paid at the time the Certificate of Occupancy is issued at the end of construction. Mr. Brown stated the applicant is willing to go ahead and front 50% of that at the time it gets the building permits and the other 50% 12 months later.

Mayor Ross asked about the number of entrances on Kirkpatrick Road, and Mr. Brown replied that there would be two entrances on Kirkpatrick Road and there will be some additional dedication of right-of-way. Mr. Brown stated that whatever was done would be subject to the issuance of driveway permits by the NCDOT. Mr. Brown stated he would envision that they would require some additional turn lanes, and if the NCDOT required it on this state-maintained road, he would certainly make that a condition.

Councilmember Wall asked about a cut-through, and Mr. Brown stated that even though it was shown on the plan, it had not been constructed, and what the developer was proposing as a condition was to build a two-lane driveway that would afford access. Mr. Brown stated that they offered to NCDOT to go ahead and construct one-half of the four lanes, and the NCDOT stated they did not know what the final elevations may be; therefore, he would prefer just to issue a driveway permit and construct on the Perry property the road when the final design was done.

Upon motion by Councilmember Starling, seconded by Councilmember Wall, it was resolved unanimously to close the public hearing. Councilmember Jones abstained from voting.

Councilmember Starling moved the adoption of the following ordinance:

06-01

ORDINANCE TO AMEND OFFICIAL ZONING MAP (Rezone Property on Kirkpatrick Road for Apartment Complex)

BE IT ORDAINED by the City Council of the City of Burlington, North Carolina:

Section 1. That the official zoning map, an element of the Burlington Zoning Ordinance, is hereby amended by rezoning from R-15, Residential District, to CR, Conditional Residential District, subject to those conditional uses with limitations as set forth in Sections 2, 3 and 4 of this ordinance the area described as follows:

Property located on the east side of Kirkpatrick Road approximately 915 feet south of Grand Oaks Boulevard as shown on Alamance County Tax Map 3, Block 22D, Lot 34.

Section 2. That the rezoning from R-15 to CR is hereby authorized subject to the following use and development conditions:

Use Condition

Dwellings, attached or detached multifamily; one owner; one lot.

Development Conditions

1. Seas Real Estate Development, Inc., will construct 279 luxurious apartment units in a peaceful gated community. This development will provide a close-knit living community where the residents can interact with one another, in essence, creating a community within a community. This project also provides housing for residents who want to be at the center of growth in West Burlington while close to the Interstate corridor. In short, this project reflects the lifestyle that existing and proposed projects in western Burlington promote.
2. The apartments will feature interior custom features amenities such as gourmet kitchens with granite countertops, high ceilings, accent tiles, walk-in closets and ceiling fans. These and other features are shown in the amenities package that is attached hereto as Exhibit D and is incorporated by reference.
3. The development will include community amenities such as a centrally located clubhouse with a pool, heated spa, cinema room, fitness center and a game and billiard room. Additional amenities include a basketball court, volleyball court, tennis court, ponds, carports, outdoor grills and picnic areas, a car wash with vacuum and nearly three acres of recreational green space.
4. The apartments and community amenities will be handicap-accessible.
5. The buildings will feature interior corridors on all three floors with elevators designed to give residents and guests convenient access to their homes in all types of weather.
6. The project plans provide for all impervious surface runoff to be handled in strict accordance with local, state and federal law so as not to create a nuisance to any neighboring landowners.

7. Automobile traffic in and out of the development will be via Kirkpatrick Road with a secondary entrance on Grand Oaks Boulevard to be constructed. In addition, a 22-foot driveway will originate at the intersection of Kirkpatrick Road and University Drive where Grand Oaks Boulevard will merge onto Kirkpatrick Road that will allow access for fire and other emergency vehicles to enter the development in the event that the Kirkpatrick Road entrances are not adequate.
8. Applicant agrees to dedicate a 50-foot right-of-way for the passage of Grand Oaks Boulevard through the present tract (Tract 1). A 60-foot right-of-way will be dedicated through the tract to the north (Tract 2) once the Applicant has that tract under contract. The exact location of the right-of-way will be determined by the North Carolina Department of Transportation.
9. Applicant agrees to dedicate a right-of-way on the eastern end of the site for development of a public road promoting connectivity from Grand Oaks Boulevard with the area to the south of the present site.
10. The proposed residential use is consistent with the future Land Use Plan for the Western Loop.
11. The proposed residential use is in harmony with the surrounding zoning in that it provides a buffer from the Office-Institutional zones to the north and west to the single-family residences to the south and far east.
12. The attached site plan addresses the May 26, 2005, City of Burlington Technical Review Committee comments for the site plan.
13. The developer will pay one half of the water and sewer fees required by this project at the time of the issuance of the first building permit and the balance 12 months thereafter.
14. The development is the highest and best use of the land.
15. A sidewalk will be constructed on the east side of the length of this property only in the Grand Oaks Boulevard right-of-way to City standards.

16. The entire Isley property will be annexed into the City of Burlington.
17. Until Grand Oaks Boulevard connects to University Drive at Kirkpatrick Road, the applicant will construct a two-way driveway at the intersection of University Drive and Grand Oaks Boulevard to run in a southwesterly direction as a secondary entrance to the development, such easement and driveway to terminate upon the completion of Grand Oaks Boulevard.

Section 3. This property will be perpetually bound to the uses authorized and subject to such conditions as imposed including site plans and other submissions, unless subsequently changed or amended as provided for in the City of Burlington Zoning Ordinance.

Section 4. Any violations or failure to accept any conditions and use limitations imposed herein shall be subject to the remedies provided in the City of Burlington Code of Ordinances and Zoning Ordinance.

Section 5. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 6. That this ordinance shall take effect upon passage.

The foregoing ordinance was seconded by Councilmember Huffman, and after full discussion, the same was voted upon and declared duly adopted, no amendments having been offered and consent having been given to place the same upon its immediate passage. Councilmembers voting in favor of the motion to adopt the foregoing ordinance were Ross, Huffman, Starling and Wall. Councilmember Jones abstained from voting.

PUBLIC HEARING:

REZONE PROPERTY - NEW SCHOOL CONSTRUCTION - BONNAR BRIDGE PARKWAY

Mayor Ross announced that a public hearing had been scheduled to consider the rezoning from R-15, Residential District, and I-1A, Planned Industrial District, to CO-I, Conditional Office-Institutional District, to allow construction of an 82,724 square foot one-story elementary

school and three athletic fields. The 18.1-acre site is located on Bonnar Bridge Parkway, east of East Buckhill Drive, west of University Drive and north of the Martin Marietta Quarry and being the southwest portion of Alamance County Tax Map 3-23-16.

Upon motion by Councilmember Starling, seconded by Councilmember Jones, it was resolved unanimously to allow Councilmember Wall to be recused.

Mr. Mark Reich, Alley, Williams, Carmen and King, requested that the public hearing be continued to the February 7, 2006, City Council meeting.

Mayor Ross asked if anyone wished to speak on this item, and there was no response.

Upon motion by Councilmember Huffman, seconded by Councilmember Jones, it was resolved unanimously to continue the public hearing to the February 7, 2006, City Council meeting. Councilmember Wall abstained from voting.

NEW BUSINESS:

SET DATE OF PUBLIC HEARING - RURAL RETREAT ROAD - ON APPEAL

Mayor Ross announced that the City Council had received a request to set a date of public hearing to consider rezoning from R-15, Residential District, to MF-A, Multifamily District, the property located on the east side of Rural Retreat Road and north of Interstate 85/40 approximately 725 feet south of Williams Mill Road and being as shown on Alamance County Tax Map 3-26-8C. (ON APPEAL)

Mr. Charles Bateman, representing Horvath Associates and Mr. Robert Wooten, stated that the proposal was consistent with the land use plan and with the western corridor plan. He pointed out that the Planning and Zoning Commission recommended denial of this request. Mr. Bateman asked that the City Council set a date for a public hearing.

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to set the date of public hearing for March 7, 2006.

Councilmember Huffman stated that the City Council should look at the area in terms of the bigger picture. He stated that the Planning and Zoning Commission was looking to the City Council for guidance and asked that this item be placed on the February work session agenda.

WATER AND SEWER LINES - DEVELOPMENT PROJECTS OVERSIZING AND EXTENSIONS AND BUDGET AMENDMENT 2006-31

Mayor Ross announced that the City Council would consider amending the 2005-2006 Budget in the amount of \$300,000.00 to cover the cost of oversizing or extending water and sewer lines to enhance the City's distribution and collection system.

BA2006-31

Increase Revenues:

30398.00	Appropriated Fund Balance	\$300,000
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Increase Expenditures:

30700.73	Capital-Other Improvements	\$300,000
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Development and Technical Services Director Jim Lauritsen stated that this budget amendment was necessary due to the increased volume of development activity within the City's jurisdiction and in the extra-territorial. He stated that water and sewer lines were a part of this development and there were times when minor extensions were needed to serve adjacent properties from lines that had been installed by developers. He explained that there were also needs to oversize sewer lines in basins to ensure that if a developer needed an eight-inch line to provide sewer service in an outfall and the City needed a 12 or 15-inch line to serve other areas, the City paid for the oversizing.

City Manager Harold Owen stated that at the work session Monday, January 9, 2006, the term working capital was used and that this was a great example of working capital to expand and grow the system, but that money was needed to make these adjustments during the year. He stated that the revenue had to be there to continue to grow the system for future use and that it was important when revenue came in at the end of the year that the City bring in additional revenue to put this money back into capital to have a balancing impact to continue to keep the system up-to-date.

Upon motion by Councilmember Jones, seconded by

Councilmember Huffman, it was resolved unanimously to approve the budget amendment.

APPOINTMENTS TO BURLINGTON/ALAMANCE AUTHORITY

Mayor Ross announced that the City Council would consider reappointments to the Burlington/Alamance Airport Authority.

Mr. Owen stated that appointments to the Airport Authority were made on a calendar year basis. He stated that the following people had been recommended: Paula Lowe, joint appointee with the City and county, and two reappointees, Glenn VanFleet and Sam Powell.

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to reappoint Paula Lowe, Glenn VanFleet and Sam Powell to the Burlington/Alamance Airport Authority.

FEDERAL COMMUNICATIONS COMMISSION - CITY OF BURLINGTON COMMENTS

Mayor Ross announced that the City Council would consider adoption of a response to the Federal Communications Commission (FCC) "notice of proposed rule making" to eliminate local franchises (would be granted by the Federal Communications Commission) and to restrict management of public rights-of-way at the local level.

Ms. Linda Hollifield, Finance/Risk Management Director, stated that it would be a concern for the City and its citizens if the FCC took over this franchising authorization. She stated that revenues had continued to grow over the last several years from \$350,000 to \$388,000, which was significant revenue for the City. She pointed out that this revenue equaled a penny on the tax rate. Ms. Hollifield explained that the City had some voice, although it was minor, over the rate/program setting.

Mr. Owen stated that the Piedmont Triad Council of Governments was coordinating efforts on a local level.

Mr. Robert Ward, City Attorney, stated that the comments to be submitted to the FCC were prepared by a liaison and asked the Council to approve the comments.

Councilmember Huffman asked that the Council contact Representative Howard Coble in efforts to stop the FCC from taking over the franchise.

Upon motion by Councilmember Huffman, seconded by Councilmember Starling, it was resolved unanimously to adopt City of Burlington Comments.

STAFF REPORTS:

GANG AWARENESS - GRANT OPPORTUNITIES

Mayor Ross announced that Police Chief Mike Gauldin would give a report on grant opportunities for gang awareness.

Chief Mike Gauldin stated that there were 14 gangs operating within the City of Burlington.

He expressed concerns with gang activity and pointed out that there was no formal prevention education or intervention programs in our community.

Chief Gauldin stated that the gang activity would continue to increase and worsen in our community if we did not make the best effort to address this issue. He stated that there were two grant opportunities; first at the federal level through the Department of Justice which would range in funding from \$60,000 to \$250,000 a year for two years and would allow the City to deliver the GREAT Program (Gang Resistance Education Training) that the City could deliver directly in the school system. The implementation of the GREAT program in the school system within the City of Burlington would require two additional school resource officers at the middle school and elementary schools and work with the parenting program and staff focusing on gang activities.

The second grant opportunity would be a state grant through the Department of Crime Control and Public Safety that offered the opportunity to focus on suppression and enforcement. He explained that the funding level was \$75,000 per year for two years and would allow him to devote a full-

time investigative position focusing on nothing but gathering intelligence, enforcement and suppressing gang activity throughout the community.

Chief Gauldin stated that the City would receive grant funding which would be the majority of the money that would be needed for these programs both through the federal grant opportunity and the state grant opportunity to cover the cost of the programs. There is a 10% match that can be done in time as it relates to the federal grant opportunity and a 25% match for the state grant opportunity.

Chief Gauldin strongly stressed the need to go forward with this program.

Councilmember Huffman asked how many additional officers would this require.

Chief Gauldin stated it would require two new school resource officers focusing entirely on prevention and education and an investigative position focusing on enforcement and suppression, which would be three positions.

Chief Gauldin stated that he would like for the Council to approve two grant opportunities that would enable the Police Department to up staff by three persons for two years and then look at sustaining those positions by either reorganizing or up-staffing at a cost to the City and perhaps the school system.

Councilmember Jones asked who funded the school resource officers.

Chief Gauldin stated that it is a partnership between the Alamance/Burlington School System and the Police Department with the school system funding three of those positions and the City funding two.

Councilmember Wall stated that school resources officers are a vital part of the school system and play an important role in the schools.

Chief Gauldin stated that as of today the Police Department was recognized and would be awarded another year of funding under the "Weed and Seed" program which will bare the \$175,000 that the City is accustomed to having as it related to the "Weed and Seed" programs. He stated that the

department also asked for an additional \$50,000 to be used specifically to attack the gang problem and was awarded that as well.

Upon motion by Councilmember Huffman, seconded by Councilmember Wall, consensus was to move forward with the grant applications.

ENVIRONMENTAL MANAGEMENT COMMISSION MEETING

Mayor Ross announced that Utilities Director Steve Shoaf would give a report on the Environmental Management Commission meeting.

Mr. Shoaf stated that on January 11, 2006, the Environmental Management Commission held a meeting to discuss the proposed Jordan Lake rules. Division of Water Quality staff were invited to present its case for the rules and two other groups spoke as well. Mr. Shoaf stated that he represented the Haw River Clean Water group comprised of support from six other counties as well as five municipalities that have actual wastewater discharges into the Haw River Watershed. Mr. Shoaf stated that there were problems with the data and that the process was rushed through on an artificial time line and that the real answers had not been discovered. He stated that the state's position was that they had done everything according to its rules or agenda. The Environmental Management Commission heard the arguments on both sides of the question and decided to send the rules back to the Water Quality Committee. Mr. Shoaf stated that during the meeting it became clear that the Water Quality Committee would be looking to the City of Burlington staff to come up with suggestions to get past this point.

City Manager Owen stated that the Council and members of the community should be proud of Mr. Shoaf in the manner he represented the City last Wednesday. He stated that Mr. Shoaf brought common sense and reality to a meeting that quite quickly realized that many of the people on the other side are well organized in lobbying efforts and made significant progress.

Mr. Owen asked Council for its support as staff meets with other jurisdictions involved to formulate a plan that can be taken back to the state in an effort to reach a compromise.

PUBLIC COMMENT PERIOD:

Mr. Celo Faucette commended the Council on a job well done in 2005 and stated that he had learned a lot about the City in the Burlington Governmental Academy.

Mr. Faucette asked the Council to look at the Rural Retreat and Williams Mill Road area and the impact fee and adequate facility issues that will be coming before the Council. Mr. Faucette stated that Burlington is a wonderful City but that it was still divided. Mr. Faucette relayed that the Council needed to bring the City together - East Burlington and North Burlington - to make everyone feel a part of the City. Mr. Faucette asked that the City and the people of Burlington make an effort to mold, bind and heal the City to make Burlington a better place in 2006.

Councilmember Wall recognized Mayor Ross for being chosen Chairman of the Piedmont Triad Council of Governments.

ADJOURN:

Upon motion by Councilmember Jones, seconded by Councilmember Starling, it was resolved unanimously to adjourn.

Jondeen D. Terry
City Clerk